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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (Sixth Order on Reconsideration)	)	MM Docket No. 92-266

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To: The Commission

LIFETIME RESPONSE
TO PETITIONS FOR RECONSIDERATION

Lifetime Television ("Lifetime") hereby responds to the petitions filed by Cox Communications, Inc. and Continental Cablevision, Inc. (collectively "Petitioners") seeking reconsideration of the Commission's Sixth Order on Reconsideration in the above-captioned cable rate regulation proceeding.[1] Petitioners ask the Commission to reverse itself and, largely as a matter of private equity, allow all cable operators an automatic right to migrate some number of program services from regulated tiers to unregulated New Product Tiers ("NPTs"). Yet the paramount determination before the Commission is not one of private equities, but rather one of public interest.

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1 Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, FCC 94-286 (released November 18, 1994).

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The Commission has recognized that its recently crafted prohibition on migration serves the public interest not only by its direct effects, but also by restoring some much-needed certainty as cable operators, programmers and consumers attempt to adapt to the cable reregulation environment. Lifetime is thus concerned about the harm that both consumers and programmers would suffer were the Commission to permit operators to migrate regulated services to NPTs or to a la carte packages, thereby fueling a new, industry-wide "migration spree."

Lifetime has, throughout this proceeding, made plain the public interest harm threatened by FCC adoption of standards that would encourage or endorse artificially-inspired migration of low-fee, advertiser-supported services to a la carte packages or NPTs. As Lifetime has previously demonstrated,[2] the ability of traditional advertiser-supported services to provide viewers with quality programming depends directly upon their continued broad distribution on cable systems' widely available regulated

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[2] Lifetime has previously set forth the economic model upon which it has developed its 24-hour program service that presents contemporary, innovative entertainment and information of particular interest to women. See Comments of Lifetime Television, MM Docket No. 92-266 (filed Jan. 13, 1995 and June 29, 1994); Reply Comments of Lifetime Television, MM Docket No. 92-266 (filed July 29, 1994); and Permitted Ex Parte Letter of Nancy R. Alpert, Vice President, Lifetime Television, to Meredith J. Jones, Chief, Cable Services Bureau (filed October 13, 1994).

tiers. Furthermore, both the risk and harm of migration are even more acute for independent program services such as Lifetime, which cannot depend upon the assured access and financial support provided by vertical integration with cable multiple system operators ("MSOs").[3]

The Commission's newly devised NPT framework provides operators with an inviting vehicle for placing program service offerings beyond the reach of rate regulation. Lifetime has thus fully supported the Commission's public interest determination not to allow operators to migrate services from regulated tiers to unregulated NPT offerings. At the same time, despite the concerns of Lifetime and other established programmers, the Commission has enabled operators to enhance the appeal of NPTs by offering such programming services within unregulated "new product" packages on a "cloned" basis.[4]

Lifetime questions the appropriateness of upsetting this carefully considered policy balance on a widespread, prospective basis simply because the FCC has declined to apply its migration prohibition retroactively in individual

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[3] The network is a joint venture of The Hearst Corporation and Capital Cities/ABC Video Enterprises, Inc., a wholly owned subsidiary of Capital Cities/ABC, Inc.

[4] By prohibiting operators from imposing any buy-through requirement beyond the basic tier, the Commission has ensured that any NPTs would be available as a substitute for and not just a supplement to regulated CPSTs.

cases. The Commission's rulemaking determination was the product of extensive comment from a full range of interested parties, through which the public interest arguments made again in these petitions for reconsideration were thoroughly aired. The same breadth of input did not inform the individual "a la carte" complaint decisions which give rise to Petitioners' claim of inequity and their call for a sweeping reversal of the Commission's public interest determination. If the tail of these early complaint cases were now allowed to wag the dog of the Commission's overall migration/a la carte policy, existing program services could face another FCC-created round of migration threats as to every cable system in the country. The reaction of consumers, who by now are looking for some stability in the packaging and pricing of their cable service, would not be difficult to predict.

In any event, the Commission should not authorize operators to undertake migration where the program service at issue does not willingly consent. Thus, any relaxation of the Commission's migration policy should also set forth that an operator must obtain the affirmative consent of a programmer (where the existing affiliation contract does not already expressly provide it) before migrating the service as contemplated. Of course, the dependence of programmers -- especially independent programmers -- on good relationships with their MSO customers would make it difficult to resist pressure from operators to permit migration. The Commission should thus take particular care to ensure that such consent is indeed freely granted where a program service had previously refused to grant such a la carte or migration rights.

In short, Lifetime urges that the Commission not disturb its sound public interest determination regarding migration solely to balance private equities. The public interest would be ill-served by any FCC action that would again unsettle the marketplace by spurring new, widespread migration and, in turn, undermining the high-value, low-fee programming that advertiser-supported services such as Lifetime now provide to the viewing public.

Respectfully submitted,

LIFETIME TELEVISION

By: [signature]

Philip V. Permut
Peter D. Ross
Rosemary C. Harold

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

February 3, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 1995, I caused copies of the foregoing "Lifetime Response to Petitions for Reconsideration" to be delivered via messenger to the following:

Paul Glist, Esq.
COLE, RAYWID & BRAVERMAN, L.L.P.
191 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
(Counsel for Continental Cablevision, Inc.)

Michael S. Schooler, Esq.
DOW, LOHNES & ALBERTSON
1255 Twenty-Third Street, N.W.
Suite 500
Washington, D.C. 20037
(Counsel for Cox Communications, Inc.)

Michael K. Baker

Michael K. Baker